# MISSOURI DEPARTMENT OF NATURAL RESOURCES

## Financial Tools for Voluntary Cleanup Sites

Fact Sheet

Hazardous Waste Program

5/2002

The Voluntary Cleanup Program (VCP) provides state oversight for the voluntary cleanup of hazardous substance releases by property owners and other parties. It is often the case that sites are entered into the VCP as part of a brownfield development, a real estate transaction, merger or stock acquisition.

The VCP has been monitoring the emergence of environmental insurance and other products and assessing the ability of these tools to attract sites into the VCP by serving as a mechanism to deal with post-remediation financial risk. The emergence of these tools is a response to the acceptance of risk-based remedies by EPA and most State authorities. Risk-based decision making sometimes concludes that part or all of the contamination at a site can be safely contained on site (such as by an engineered cap) or be subject to a longer term remedy (such as monitored natural attenuation). These remedies require future management which carries some level of financial risk. Environmental insurance and related tools can transfer the risk posed by residual contamination to a financially secure entity, thus providing assurances for the parties to a transaction who need closure before remedies are complete.

Some of the financial tools now available are cost cap insurance, pollution legal liability insurance, insurance for institutional controls and post-remediation care, and private and non-profit institutional care funds.

### Cost Cap Insurance

This product has been available for several years and operates to cap the remediation expense at a negotiated sum with an insurance layer over the negotiated cap. Cost cap insurance may be used to reduce uncertainty at the beginning of a project, thereby enticing a party to initiate a transaction and a remediation. Its success relies upon a thorough site investigation and the establishment of cleanup levels, which allows total cost to be predicted. Cost cap insurance can keep a project from faltering in the event of cost overruns or unforeseen conditions.

### Pollution Legal Liability Insurance

Offered by several insurance companies, pollution legal liability insurance addresses the third party risk posed by contamination, both pre and post-remediation, among other things. An example of this contingent risk includes possible claims by neighboring landowners and lessees. For example, a groundwater plume undergoing monitored natural attenuation may be predicted to degrade before reaching a neighboring property. Should those predictions fail and the neighbor's groundwater become contaminated, legal liability insurance would protect the property owner from third party damages.

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## Institutional Control Insurance

A recurring issue at VCP sites is the responsibility of the participants in maintaining land use restrictions and performing long-term operation and maintenance required for the approval of a remedial action by the VCP. There are concerns of unknown conditions or new and unanticipated regulatory requirements that could require the reopening of the remedial action. Concern over these contingent risks and responsibilities could deter a party otherwise willing to proceed with a brownfield development. Products in this category cover a party's liability for unpredicted future costs.

## Private and Non-Profit Funds for Institutional Control and Contingent Risk

Although the VCP cannot at this time sponsor or recommend any particular initiative, we are monitoring efforts around the country to create trust funds where the risk and obligations for institutional controls for a long-term remedy can be transferred to a single solvent entity whose main purpose is stewardship of institutional controls at remediated sites. The VCP can be a resource for its participants in applying these opportunities to a specific site.

These financial tools do not replace any of the requirements of the VCP in approving sites for inclusion in the program, the investigation of sites, remedy selection, or remedial action. At the same time, the VCP's decisionmaking does not address all the possible financial risks perceived by the marketplace, both pre- and post-remediation. We welcome the use of financial tools which can work in concert with voluntary cleanup to promote more cleanup and reuse of contaminated sites in Missouri.

## For more information

For more information on Missouri's Voluntary Cleanup Program and the use of financial tools, call or write

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